

The Honorable John H. Chun

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

V.

AMAZON.COM, INC., *et al.*,

Defendants.

Case No. 2:23-cv-0932

**STIPULATED MOTION TO SEAL
MATERIAL CITED IN EXHIBIT A
OF FTC'S MOTION TO MODIFY
SCHEDULING ORDER**

NOTE ON MOTION CALENDAR:
May 13, 2024

Pursuant to Local Civil Rule 5(g), Plaintiff Federal Trade Commission (“Plaintiff” or “FTC”) and Defendant Amazon.com, Inc. (“Defendant” or “Amazon”) respectfully jointly move the Court to seal certain documents, or excerpts thereof, cited in the Declaration of Evan Mendelson (“Mendelson Declaration”), which is Exhibit A of the Plaintiff’s Motion to Modify the Scheduling Order (“Motion to Modify”). *See* Dkt. #158. In support of this Stipulated Motion, Plaintiff and Defendant state as follows.

1. On May 13, 2024, the FTC filed its Motion to Modify. Dkt. #158.

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1 2. On the same day, the FTC filed under seal an unredacted version of the
 2 Mendelson Declaration. Dkt. #160. The FTC has also filed redacted, public versions of these
 3 materials. Dkt. #161.

4 3. The FTC and Amazon jointly move to seal materials cited in the Mendelson
 5 Declaration (the “Sealed Material”), which are identified in the chart below and attached as
 6 exhibits to the Mendelson Declaration. The proposed sealed portions are highlighted in blue in
 7 the exhibits attached to the unredacted Mendelson Declaration filed under seal. *See* Dkt. #160.

8 4. The Court’s Protective Order (ECF No. 124 ¶ 5.4) and Local Rule 5(g)(3)(B)
 9 require that the Party seeking to file information under seal provide (1) a statement of the
 10 applicable legal standard, (2) the legitimate private or public interests that warrant the relief
 11 sought, (3) the injury that will result if the relief sought is not granted, and (4) why a less
 12 restrictive alternative to the relief sought is not sufficient. Amazon submits paragraphs 5-8 in
 13 accordance with these requirements.

14 5. A party seeking to seal documents attached to a non-dispositive motion need only
 15 show “good cause” to keep the documents from public view because “the public has less of a
 16 need for access to court records attached only to non-dispositive motions.” *Kamakana v. City &*
17 Cnty. of Honolulu, 447 F.3d 1172, 1179 (9th Cir. 2006); *Center for Auto Safety v. Chrysler*
18 Group, LLC, 809 F.3d 1092, 1097 (9th Cir. 2016) (“good cause” standard applies to non-
 19 dispositive motion unrelated to the merits of the case). The Motion to Modify is a non-
 20 dispositive motion. To show good cause, the moving party must articulate a specific harm that
 21 would occur if the subject information was made public. *See Phillips v. General Motors Corp.*,
 22 307 F.3d 1206, 1213 (9th Cir. 2002). Furthermore, even under the heightened “compelling

1 reasons" standard used for sealing information attached to dispositive motions, courts have long
 2 recognized that "business information that might harm a litigant's competitive standing" should
 3 be sealed. *See, e.g., Nixon v. Warner Commnc 'ns, Inc.*, 435 U.S. 589, 598 (1978).

4 6. Amazon's legitimate business interests warrant the relief sought. Amazon seeks
 5 to seal only limited confidential business information, such as internal metrics and proprietary
 6 internal analyses, similar to those described in Amazon's declaration in support of its earlier
 7 motion to seal. *See* ECF No. 42. This Court granted a motion to seal similar information under a
 8 heightened "compelling reasons" standard in this case. *See* ECF No. 79. The limited
 9 information that Amazon seeks to seal thus easily satisfies the applicable "good cause" standard.
 10 For the Sealed Material, Amazon further takes the following positions:

11 Document	12 Proposed Seal	13 Amazon's Position
12 FTC's Third Set of Requests for the Production of Documents	13 Redactions, at page 18	14 Proposed redactions are necessary to protect highly sensitive commercial information.
14 Amazon's Responses and Objections to FTC's Third Set of Requests for the Production of Documents	15 Redactions, at page 34-35	16 Proposed redactions are necessary to protect highly sensitive commercial information.
17 February 15, 2024 Letter from FTC Counsel to Defendants' Counsel	18 Redactions, at pages 2-4	19 Proposed redactions are necessary to protect highly sensitive commercial information.
19 March 15, 2024 Letter from FTC Counsel to Defendants' Counsel	20 Redactions, at pages 2-5	21 Proposed redactions are necessary to protect highly sensitive commercial information.
21 March 22, 2024 Letter from Defendants' Counsel to FTC Counsel	22 Redactions, at pages 2-3	23 Proposed redactions are necessary to protect highly sensitive commercial information.

1	April 12, 2024 Letter from FTC Counsel to Defendants' Counsel	Redactions, at pages 2-4	Proposed redactions are necessary to protect highly sensitive commercial information.
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3 7. As explained in Amazon's original motion to seal similar information, which the
4 Court granted, the public release of this information would harm Amazon's competitive position.
5 *See* ECF No. 41. The risk of Amazon's competitors using this commercially sensitive
6 information to their own advantage significantly outweighs any limited public interest in public
7 disclosure of these few discrete pieces of information. *See, e.g., McCrary v. Elations Co. LLC,*
8 2014 WL 12589137, at *6 (C.D. Cal. Dec. 2, 2014) (sealing internal clinical studies and
9 consumer surveys because "disclosure of these documents could benefit Defendant's competitors
10 and reduce any business advantage that Defendant currently possesses"). In addition, Amazon
11 seeks to seal images and names of customers who have taken Amazon surveys, which is
12 consistent with the previous redactions and sealed filings that Amazon sought and this Court
13 granted. *See* ECF Nos. 41 & 79.

14 8. There is no less restrictive alternative to sealing the discrete pieces of information
15 that Amazon has identified. Amazon has applied only limited redactions wherever possible, and
16 otherwise seeks to seal in full only a few documents which are so thoroughly full of confidential
17 information that redactions would not be feasible. This approach is aligned with the previous
18 redactions and sealed filings that Amazon sought and this Court granted. *See* ECF Nos. 41 & 79.

19 9. The FTC stipulates to filing under seal the documents or portions of documents
20 identified above. It takes no position as to Amazon's assertions in paragraphs 5-8 above.

LOCAL RULES 5(g)(3)(A), 7(e) CERTIFICATION

Pursuant to Local Rule 5(g)(3)(A), undersigned counsel certify that they met and conferred by email on May 7-10, 2024 to reach the agreement described in this Stipulated Motion.

Undersigned counsel also certify that this memorandum contains 952 words, in compliance with the Local Civil Rules.

Dated: May 13, 2024 /s/ Olivia Jerjian

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